

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

No. 2362

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Introduced by Assembly Member Chu

February 18, 2016

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An act to add Section 4777 to the Civil Code, relating to common interest developments.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2362, as amended, Chu. Common interest ~~developments.~~  
*developments: pesticide application.*

Existing law, the Davis-Stirling Common Interest Development Act, regulates the creation and governance of common interest developments, which are managed by associations. *Existing law generally provides that an association is responsible for maintaining common areas in the development and owners of separate interests are responsible for their interests. Existing law permits an association to require the removal of an occupant of a separate interest for such times and periods as may be necessary for the effective treatment of wood-destroying pests.* Existing law generally requires a landlord or his or her authorized agent to provide notice to tenants, and under certain circumstances tenants of adjacent units, of the use of pesticides at the tenant's dwelling unit or in common areas if the landlord or authorized agent applies any pesticide without a licensed pest control operator.

~~This bill would state the intent of the Legislature to subsequently amend this bill to include provisions that would require notification of tenants living in a unit on property that is part of a homeowner's association when pesticides are to be applied by unlicensed professionals.~~ *require a common interest development association or*

*its authorized agent to provide notice to an owner or tenant of a separate interest, and under certain circumstances to owners or tenants of adjacent separate interests, if pesticide is to be applied without a licensed pest control operator to a separate interest or to a common area. The bill would prescribe the contents of the notice and how it is to be provided. The bill would authorize an owner or occupant to agree to immediate pesticide application and would prescribe a revised notification procedure in this instance.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares the following:*  
2     (a) *Existing law, Section 1940.8.5 of the Civil Code, requires*  
3     *a landlord or his or her agent who applies pesticide in certain*  
4     *ways to a dwelling unit or common area without a licensed pest*  
5     *control operator to provide to tenants of potentially affected units*  
6     *written notification that includes the pest to be targeted, the*  
7     *pesticide to be used, the frequency of its use, and a health and*  
8     *safety statement prior to the pesticide application.*  
9     (b) *It is the intent of this bill, therefore, that when pesticides*  
10    *are about to be applied to the separate interests or to the common*  
11    *areas of a common interest development either by the homeowner*  
12    *association or by one of its agents rather than by a licensed pest*  
13    *control operator, that the occupants of the separate interests,*  
14    *whether owners or tenants, and occupants of adjacent separate*  
15    *units that could reasonably be impacted by the pesticide be*  
16    *provided with substantially the same written notification that they*  
17    *would have received under existing law had the pesticides been*  
18    *applied by a licensed pest control operator.*  
19    SEC. 2. *Section 4777 is added to the Civil Code, to read:*  
20    4777. (a) *For the purposes of this section:*  
21    (1) *“Adjacent separate interest” means a separate interest that*  
22    *is directly beside, above, or below a particular separate interest*  
23    *or the common area.*  
24    (2) *“Authorized agent” means an individual, organization, or*  
25    *other entity that has entered into an agreement with the association*  
26    *to act on the association’s behalf.*

1 (3) “Broadcast application” means spreading pesticide over  
2 an area greater than two square feet.

3 (4) “Electronic delivery” means delivery of a document by  
4 electronic means to the electronic address at, or through which,  
5 an owner of a separate interest has authorized electronic delivery.

6 (5) “Licensed pest control operator” means anyone licensed  
7 by the state to apply pesticides.

8 (6) “Pest” means a living organism that causes damage to  
9 property or economic loss, or transmits or produces diseases.

10 (7) “Pesticide” means any substance, or mixture of substances,  
11 that is intended to be used for controlling, destroying, repelling,  
12 or mitigating any pest or organism, excluding antimicrobial  
13 pesticides as defined by the Federal Insecticide, Fungicide, and  
14 Rodenticide Act (7 U.S.C. Sec. 136(mm)).

15 (b) (1) An association or its authorized agent that applies any  
16 pesticide to a separate interest or to the common area without a  
17 licensed pest control operator shall provide the owner or the tenant  
18 of an affected separate interest and, if making broadcast  
19 applications, or using total release foggers or aerosol sprays, the  
20 owner or tenant in an adjacent separate interest that could  
21 reasonably be impacted by the pesticide use with written notice  
22 that contains the following statements and information using words  
23 with common and everyday meaning:

24 (A) The pest or pests to be controlled.

25 (B) The name and brand of the pesticide product proposed to  
26 be used.

27 (C) “State law requires that you be given the following  
28 information:

29  
30 CAUTION – PESTICIDES ARE TOXIC CHEMICALS. The  
31 California Department of Pesticide Regulation and the United  
32 States Environmental Protection Agency allow the unlicensed use  
33 of certain pesticides based on existing scientific evidence that there  
34 are no appreciable risks if proper use conditions are followed or  
35 that the risks are outweighed by the benefits. The degree of risk  
36 depends upon the degree of exposure, so exposure should be  
37 minimized.

38 If within 24 hours following application of a pesticide, a person  
39 experiences symptoms similar to common seasonal illness  
40 comparable to influenza, the person should contact a physician,

1 appropriate licensed health care provider, or the California Poison  
2 Control System (1-800-222-1222).

3 For further information, contact any of the following: for Health  
4 Questions – the County Health Department (telephone number)  
5 and for Regulatory Information – the Department of Pesticide  
6 Regulation (916-324-4100).”

7

8 (D) The approximate date, time, and frequency with which the  
9 pesticide will be applied.

10 (E) The following notification:

11 “The approximate date, time, and frequency of this pesticide  
12 application is subject to change.”

13 (2) At least 48 hours prior to application of the pesticide to a  
14 separate interest, the association or its authorized agent shall  
15 provide individual notice to the owner of the separate interest as  
16 well as notice to any tenant of the separate interest, as well as any  
17 owner or tenant occupying any adjacent separate interest that is  
18 required to be notified pursuant to paragraph (1). Notice to tenants  
19 of separate interests shall be provided, in at least one of the  
20 following ways:

21 (A) First-class mail.

22 (B) Personal delivery to an occupant 18 years of age or older.

23 (C) Electronic delivery, if an electronic mailing address has  
24 been provided by the tenant.

25 (3) (A) Upon receipt of written notification, the owner of the  
26 separate interest or the tenant may agree in writing or, if  
27 notification was delivered electronically, the tenant may agree  
28 through electronic delivery, to allow the association or authorized  
29 agent to apply a pesticide immediately or at an agreed upon time.

30 (B) (i) Prior to receipt of written notification, the association  
31 or authorized agent may agree orally to an immediate pesticide  
32 application if the owner or occupant requests that the pesticide  
33 be applied before the 48-hour of the pesticide product proposed  
34 to be used.

35 (ii) With respect to an owner or occupant entering into an oral  
36 agreement for immediate pesticide application, the association or  
37 authorized agent, no later than the time of pesticide application,  
38 shall leave the written notice specified in paragraph (1) in a  
39 conspicuous place in the separate interest or at the entrance of

1 *the separate interest in a manner in which a reasonable person*  
2 *would discover the notice.*

3 *(iii) If any owner of a separate interest or occupant in an*  
4 *adjacent separate interest is also required to be notified pursuant*  
5 *to this subparagraph, the association or authorized agent shall*  
6 *provide that person with this notice as soon as practicable after*  
7 *the oral agreement is made authorizing immediate pesticide*  
8 *application, but in no case later than commencement of application*  
9 *of the pesticide.*

10 *(4) A copy of a written notice provided pursuant paragraph (1)*  
11 *shall be attached to the minutes of the board meeting immediately*  
12 *subsequent the application of the pesticide.*

13 ~~SECTION 1. It is the intent of the Legislature to subsequently~~  
14 ~~amend this measure to include provisions that would require~~  
15 ~~notification of tenants living in a unit on property that is part of~~  
16 ~~an owners' association when pesticides are to be applied by~~  
17 ~~unlicensed professionals.~~